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6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

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9 UNITED STATES OF AMERICA, ) 3:09-CR-00046-LRH-RAM  
10 ) 3:11-CV-00409-LRH-WGC  
11 Plaintiff, ) CA No. 11-17805  
12 vs. )  
13 GILBERTO LOPEZ-MONJARAZ, ) ORDER  
14 Defendant. )  
14 \_\_\_\_\_)

15 Before the court is Defendant Gilberto Lopez-Monjaraz's notice of appeal, which the  
16 court construes as a request for certificate of appealability. (Doc. #30; *see also* Doc. #33.)

17 On October 18, 2011, this court entered an Order (Doc. #28) granting in part and denying  
18 in part Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §  
19 2255 (Doc. #22). The court granted the motion as to his attorney's failure to file a notice of  
20 appeal and accordingly vacated and re-entered the Judgment (Doc. #29) to allow Defendant an  
21 opportunity to file an appeal. The court denied Defendant's motion as to the sole remaining issue  
22 of ineffective assistance of counsel for failure to raise an *Apprendi* challenge concerning the  
23 amount of methamphetamine used in his sentencing calculations. Defendant now appeals the  
24 court's denial of relief. (Doc. #30.)

25 To appeal a final order in a proceeding under § 2255, a petitioner must obtain a certificate  
26 of appealability. 28 U.S.C. § 2253(c)(1). To obtain such a certificate, the petitioner must make  
27 "a substantial showing of the denial of a constitutional right" with respect to each issue sought to  
28 be raised on appeal. *Id.* § 2253(c)(2), (3); *Lambright v. Stewart*, 220 F.3d 1022, 1024-25 (9th

1 Cir. 2000). To satisfy this standard, the petitioner "must demonstrate that the issues are  
2 debatable among jurists of reason; that a court could resolve the issues in a different manner; or  
3 that the questions are adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*,  
4 463 U.S. 880, 893 n.4 (1983) (brackets, internal quotation marks and citation omitted). Any  
5 doubts as to whether this standard is satisfied are resolved in the petitioner's favor. *Lambright*,  
6 220 F.3d at 1025.

7 In denying relief, the court not only determined that Defendant is not entitled to relief, but  
8 also that Defendant had "failed to establish that his claims are anything but frivolous." (Doc.  
9 #28, p. 3.) Accordingly, the court concludes that Defendant has failed to make a substantial  
10 showing of the denial of a constitutional right.

11 IT IS THEREFORE ORDERED that the request for certificate of appealability is  
12 DENIED.

13 IT IS SO ORDERED.

14 DATED this 29th day of November, 2011.



15  
16 LARRY R. HICKS  
17 UNITED STATES DISTRICT JUDGE  
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